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Proposals and contributions received from Governments

Peru: elements for inclusion in the United Nations Convention against Corruption

I. Preventing and combating the transfer of assets, including funds, of illicit origin derived from acts of corruption and recovering such assets

1. Peru proposes the inclusion of the following provisions under this section of the draft convention:

"1. States Parties shall, in accordance with their domestic laws, afford one another the widest measure of cooperation and assistance regarding the most effective ways and means of preventing and combating transfers of assets, including funds, of illicit origin derived from acts of corruption by adopting, inter alia, effective measures and mechanisms for:

"(a) Exchanging with other States Parties information on corrupt methods and expedients employed in carrying out transfers of assets, including funds, of illicit origin derived from acts of corruption; and

"(b) Cooperating with other States Parties, through their financial institutions and regulatory and oversight bodies, in the detection and freezing of transfers and transactions, in the economic and financial systems, involving assets, including funds, of illicit origin derived from acts of corruption.

"2. States Parties shall cooperate with one another for the purpose of implementing appropriate and effective measures to ensure that the officials in charge of their banking and financial systems and of their regulatory and oversight bodies help to prevent transfers of assets, including funds, of illicit origin derived from acts of corruption by, inter alia, recording transactions in a transparent manner; clearly identifying their clients; not granting preferential or advantageous conditions to politicians or public officials; informing competent authorities about suspicious transactions; lifting bank secrecy when necessary; detecting and subsequently ordering the freezing of assets,

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including funds, of illicit origin derived from acts of corruption; and facilitating the recovery of such assets by their countries of origin.

"3. States Parties shall cooperate with one another in ensuring that their banking and financial systems and their regulatory and oversight bodies prohibit the establishment of banks or other financial institutions with no real existence and demand that banks in turn require from their correspondent or related banks the strict observance of anti-money-laundering policies such as the 'know-your-client' principle and the reporting of suspicious activities.

"4. States Parties shall cooperate with one another in ensuring that their banking and financial institutions maintain records, over an appropriate period of time, of transactions carried out. The records should contain information relating to the amount of the transaction, the identity and domicile of the participants in the transaction, the legal capacity of anyone participating on behalf of a legal person and the identity of the true beneficiary of the transfer in question as well as an exact description of the transaction.

"5. In connection with paragraph 4, States Parties shall cooperate with one another for the purpose of preventing fictitious companies and legal entities of any type from concealing from the judicial authorities or from the banking and financial system the identity of the true owners of assets, including funds, and that of the true beneficiaries of transactions. To that end, States Parties shall cooperate with one another in establishing uniform standards relating to the criminal, civil and administrative liability of legal persons involved in acts of corruption, including banking and financial institutions, and of the natural persons responsible for the acts of such legal persons.

"6. States Parties shall cooperate with one another in ensuring that bank secrecy and taxation provisions do not hamper judicial and administrative cooperation in preventing and combating corruption. Accordingly, as provided for in this article, a State Party may not invoke bank secrecy in order to refuse to render the cooperation and assistance requested by another State Party.

"7. For the purposes of this Convention, the recovery of assets, including funds, of illicit origin by the affected countries of origin shall be an inalienable right insofar as the transferred assets of illicit origin derive from acts of corruption and related offences.

"8. States Parties shall cooperate with one another for the purpose of expediting the process of recognition of judicial sentences establishing criminal, civil and administrative liability in cases of corruption and related offences, with a view to facilitating the recovery of assets, including funds, of illicit origin derived from acts of corruption.

"9. In coordination with the banking and financial institutions and with the regulatory and oversight bodies of their respective countries, States Parties shall cooperate with one another in eliminating any regulatory gaps in their respective laws that might give rise to transfers and concealment of assets, including funds, of illicit origin derived from acts of corruption and in providing the guarantees necessary for facilitating the return of such assets to their countries of origin.

"10. States Parties shall afford one another mutual technical assistance in the revision of their respective financial laws with a view to eliminating any regulatory gaps that might permit the uncontrolled transfer of assets, including funds, of illicit origin derived from acts of corruption. When appropriate, such assistance shall also include the assessment of the legislation in force for the purpose of updating it in the light of relevant current legal trends and theories.

"11. States Parties shall, in conformity with their respective legal systems, afford one another the widest measure of technical assistance in preventing and combating transfers of assets, including funds, of illicit origin derived from acts of corruption and in the recovery of such assets by their countries of origin through the promotion of the mutual exchange of relevant experience and specialized knowledge.

"12. Each State Party shall formulate, develop or upgrade training programmes specifically designed for personnel responsible for preventing and combating transfers of assets, including funds, of illicit origin derived from acts of corruption and promoting the recovery of such assets by their countries of origin. Those programmes shall be concerned with:

"(a) Detection and freezing of transfers of assets, including funds, of illicit origin derived from acts of corruption;

"(b) Surveillance of the movement of assets, including funds, derived from acts of corruption and of the methods used to transfer, conceal or disguise such assets;

"(c) Appropriate and efficient judicial and administrative mechanisms and methods for facilitating the repatriation of assets, including funds, of illicit origin derived from acts of corruption.

"13. States Parties shall cooperate with one another for the purpose of preventing and combating the transfer of assets, including funds, of illicit origin derived from acts of corruption and of promoting ways and means of recovering such assets by, inter alia, establishing a financial intelligence unit that will freely exchange with other such units any information that it possesses without the need for legal formalities. The recipient financial intelligence unit should be able to use that information within its country in accordance with the legislation governing it.

"14. In order to facilitate the recovery of assets, including funds, derived from acts of corruption, States Parties shall cooperate in providing each other with the names of experts who could assist in achieving that objective.

"15. States Parties shall not be entitled to refuse to cooperate with one another and shall accordingly afford mutual assistance with a view to expediting and providing guarantees in respect of proceedings initiated for the purpose of bringing about the return of assets, including funds, of illicit origin derived from acts of corruption to their countries of origin after being transferred. States Parties shall cooperate in providing each other with the names of experts who could assist in achieving that objective."

Proposal regarding a seminar to examine the problem of the recovery of assets

2. It is proposed that an international seminar, organized by the Centre for International Crime Prevention, be held in parallel with the second session of the Ad

Hoc Committee for the Negotiation of a Convention against Corruption for the purpose of identifying cases of corruption in which assets, including funds, of illicit origin derived from corruption are transferred through the domestic and international financial system with the aim of considering, in each specific case, appropriate measures and mechanisms for bringing about the recovery of the assets by their countries of origin.

3. Among other topics, the seminar could offer States an opportunity to consider the appropriateness of establishing a United Nations body consisting of specialists in the recovery of assets whose purpose would be to provide requesting countries with legal assistance in their efforts to recover assets.

II. International cooperation

4. Peru proposes the inclusion of the following provisions under this section:

"1. States Parties shall, in accordance with their respective legal systems, afford one another the widest measure of cooperation regarding the most effective ways and means of preventing, detecting, investigating and punishing acts of corruption. They shall also cooperate with one another for the purpose of promoting cooperation and coordination directed towards preventing and combating corruption and related offences. In particular, each State Party shall adopt effective measures and mechanisms:

"(a) To establish channels of communication between their competent authorities, institutions and agencies or, where such channels exist, to improve them, in order to facilitate the secure, effective and rapid exchange of information relating to crimes of corruption and to their links with other criminal activities;

"(b) To exchange information with other States Parties in connection with ongoing investigations of crimes of corruption and related offences and also during the detection of acts of corruption. To that end, States Parties shall establish, within their respective countries, a data bank containing information about institutions and officials and other persons concerned with the fight against corruption, which could be distributed and circulated to States so requesting;

"(c) To cooperate with other States Parties in the conduct of investigations relating to the identity, whereabouts and activities of persons involved in crimes of corruption and in the tracing of third parties involved;

"(d) To coordinate the judicial, administrative and other measures necessary for the prompt detection, investigation and punishment of crimes of corruption and related offences;

"(e) To compile and share analytical experiences of acts of corruption at the bilateral level and through subregional, regional and international organizations and agencies.

In order to facilitate and improve the efficiency of the measures and mechanisms referred to above, each State Party shall designate a liaison officer or responsible central official whose name and functions shall be communicated, for registration and circulation to States Parties, to the Centre for International Crime Prevention.

"2. States Parties shall cooperate with one another for the purpose of adopting the necessary legal and administrative measures in order that letters rogatory concerning corruption sent by one State Party to another State Party can be considered and transmitted with priority and with the avoidance of returns or delays for reasons of form that do not affect the substance of the request.

"3. States Parties shall cooperate with one another in implementing appropriate and effective measures in order that their banking and financial systems can prevent acts of corruption and related offences by, inter alia, recording transactions in a transparent manner; identifying their clients; not granting preferential or advantageous conditions to politicians or public officials; informing competent authorities about suspicious transactions; and facilitating the detection and subsequent freezing of assets.

"4. States Parties shall cooperate with one another in eliminating any regulatory gaps in their respective laws that might permit or give rise to acts of corruption and related offences.

"5. States Parties shall cooperate with one another for the purpose of expediting the process of recognition of judicial sentences establishing criminal, civil and administrative liability in cases of corruption and related offences in accordance with this Convention.

"6. States Parties shall cooperate with one another, through their national authorities or entities responsible for preventing and combating corruption and promoting ethics and transparency in public administration, for the purpose of exchanging successful experiences and promoting transparency in public administration and the private sector by, inter alia, adopting transparent auditing and public procurement regulations and procedures.

"7. States Parties shall, with a view to facilitating efficient implementation of the provisions arising from this Convention, conclude bilateral or multilateral agreements or arrangements on direct cooperation among their respective law enforcement agencies and, where such agreements or arrangements already exist, amend them in order to increase cooperation and coordination. In the absence of such agreements and arrangements between States Parties, this Convention shall be considered the basis for cooperation in preventing and combating corruption and related offences. Where appropriate, States Parties shall also conclude agreements and arrangements with subregional, regional and international organizations for the purpose of increasing cooperation and coordination among their respective national authorities.

"8. In coordination with the Office for Drug Control and Crime Prevention, States Parties shall cooperate in maintaining a database that includes evaluations and national plans for combating corruption, with a view to establishing a guide to best practices that may help in promoting cooperation among them.

"9. States Parties shall support the Centre for International Crime Prevention through voluntary contributions in order to promote cooperation programmes and projects, especially ones aimed at developing countries, with a view to implementing this Convention."

III. Technical assistance

5. Peru proposes the inclusion of the following provisions under this section:

"1. States Parties shall, in accordance with their respective legal systems, afford one another the widest measure of technical assistance, especially for the benefit of developing countries, in the prevention, detection, investigation and punishment of acts of corruption and related offences by exchanging relevant experience and specialized knowledge and providing one another with all types of material, technical and other support used, in particular, in their respective national programmes and plans for combating corruption.

"2. States Parties shall assist one another in the conduct of evaluations, studies and research relating to the types, causes, effects and costs of corruption in their respective countries with a view to formulating national strategies and action plans for combating corruption with the participation of national authorities and civil society.

"3. Each State Party shall formulate, develop or upgrade training programmes specifically designed for personnel responsible for preventing and combating corruption, including prosecutors, judges and police officers. Those programmes, which could include secondments and internships, shall be concerned with:

"(a) Identification of acts of corruption with a view to their subsequent punishment;

"(b) Effective measures employed in the prevention, detection, investigation, punishment and control of acts of corruption and related offences;

"(c) Gathering of evidence and investigative methods;

"(d) Methods used in protecting victims and witnesses who cooperate with the judicial authorities.

"4. States Parties shall, in affording mutual technical assistance in preventing and combating corruption, organize, when appropriate, subregional, regional and international conferences and seminars for the purpose of promoting cooperation and mutual assistance.

"5. States Parties shall promote technical assistance activities that facilitate extradition and mutual judicial assistance. Such technical assistance could include secondments or internships of personnel arranged between central authorities or agencies responsible for preventing and combating corruption and also training in national and international regulations, comparative legislation and languages.

"6. Within the framework of other relevant bilateral and multilateral agreements or arrangements, States Parties shall endeavour to optimize the training activities being organized in this sphere, in particular those conducted under the auspices of subregional, regional and international organizations.

"7. States Parties shall study voluntary mechanisms with a view to contributing financially to the efforts of developing countries and countries

with economies in transition in applying this Convention through technical assistance programmes and projects.

"8. States Parties shall make voluntary contributions to the Centre for International Crime Prevention for the purpose of fostering, through the Centre, programmes and projects in developing countries with a view to the implementation of this Convention."

IV. Use of terms

6. Peru proposes the inclusion of the following definitions:

"1. For the purposes of this Convention, the terms 'public official', 'government officer' and 'public servant' shall also denote a person who:

"(a) Performs public functions de facto, regardless of whether that person has been formally appointed or assigned to perform such functions;

"(b) Holds a public office but in practice performs the functions specific to another post despite not having been formally appointed or assigned to perform such functions;

"(c) Possesses recognized power or influence in government or public service or administration although without formally holding a public post; or

"(d) Possesses recognized power or influence in government or public service or administration although formally holding a public office not compatible with that power or influence.

"2. For the purposes of this Convention, the term 'corruption' shall denote an act whereby a public official:

"(a) Gives a sum of money or other illicit advantage to an individual with a view to his or her performing an illicit or illegal act, whether criminal or not;

"(b) Influences an individual in some other way with a view to his or her performing an illicit or illegal act, whether criminal or not;

"(c) Influences another public official with a view to his or her acting or refraining from acting in breach of his or her duties, whether or not an economic or other advantage is involved; or

"(d) Influences another public official with a view to his or her acting or refraining from acting in the exercise of his or her duties, whether or not an economic or other advantage is involved, provided that the influence is exerted for the purpose of ensuring that the other public official will act or decide in a particular manner.

"3. For the purposes of this Convention, the term 'corruption' shall additionally apply to any of the acts described in paragraphs 1 and 2 of this article if their objective is to maintain in power—under the same or another name—the group that is exercising governmental authority or to enable that group to gain power within another public or government entity."